

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

JUL 20 P 4:01

CLERK'S OFFICE
U.S. COURT OF APPEALS
FOR THE FIRST CIRCUIT

CASE NO. : 03CR10349WGY

UNITED STATES

v.

**JUAN MONTERO,
DEFENDANT**

**DEFENDANT'S SECOND MOTION TO CONTINUE THE DATE FOR
FILING OBJECTIONS TO THE PRESENTENCE REPORT AND THE
DATE FOR SENTENCING**

The defendant moves this Honorable Court further continue the date for filing objections to the PSR and the date for sentencing. The defendant states as reason in support thereof, that on Monday, July 18, 2005, defendant's counsel appeared in Fitchburg District Court on a motion to vacate conviction on Criminal Complaint 9916CR617. After hearing, the court, Mandell, J. allowed the motion. (A copy is attached hereto). Accordingly, the career offender provisions at U.S.S.G. sec. 4B1.1 are no longer applicable.

The defendant has been cooperating with the government, however, the committee which decides the extent of consideration the defendant will be given

and resultant recommendation of a sentence to the court has not yet reviewed this case, since the defendant's criminal history would be altered if the previously pending motion to vacate was allowed.

Wherefore, the defendant requests that this Honorable court postpone the time for filing objections to the PSR and the date for sentencing, until such time that the government can review the defendant's actual record of convictions and make a considered decision as to its final recommendation to the Court. AUSA Weinreb assents to this motion.

JUAN MONTERO

By his attorney,

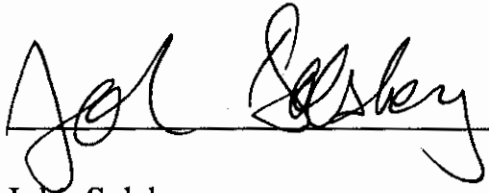
A handwritten signature in dark ink, appearing to read "John Salsberg", is written over a horizontal line.

John Salsberg
B.B.O. No. 439300
SALSBERG & SCHNEIDER
95 Commercial Wharf
Boston, MA 02110
(617) 227-7788

Dated: July 20, 2005

CERTIFICATE OF SERVICE

I hereby certify that I have served the within Motion to Continue upon the United States Attorney's Office by hand delivery, to AUSA William Weinreb, United States Attorney's Office, 1 Courthouse Way, Suite 9200, Boston, MA 02210.



John Salsberg

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

FITCHBURG DISTRICT COURT
DOCKET NO. 9916CR000617

COMMONWEALTH

V.

NELSON MORALES

MOTION TO VACATE CONVICTION

Now comes the defendant, Nelson Morales (true name Hector Guerra), and moves that this Court enter an order vacating the defendant's conviction and granting him a new trial pursuant to Mass. R. Crim. P. 30(b).

In support of this motion, the defendant states as follows:

1. On July 29, 1999, defendant pled guilty to the charge of distribution of a class B substance and received a 1 year House of Correction sentence suspended for one year (Curran, J. presiding). (See Docket Sheets, Exhibit 1).
2. As the tape of the proceeding was destroyed, the only records that remain are the docket sheets and the Tender of Plea or Admission/Waiver of Rights. (See Tender of Plea Form, Exhibit 2).
3. The record indicates that the constitutionally required plea colloquy regarding the knowing, voluntary, and intelligent nature of the defendant's plea did not occur. Because there is no affirmative record establishing that the required plea colloquy occurred, the defendant's conviction must be vacated. See Commonwealth v. Fernandes, 390 Mass. 714, 715 (1984).
4. On the back of the green sheet, there is no certification that the court advised the

A TRUE COPY ATTEST

Ronald B. Inyemie
CLERK-MAGISTRATE

7/18/05
allowed
I am not
convinced
even by the
proposed
officer's
evidence
a full transcript
colloquy was
conducted
at the plea
of the
defendant
Mandell